

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SEAN ANTHONY GILMORE,

Plaintiff,

v.

**Civil Action 2:16-cv-395
Judge George C. Smith
Magistrate Judge Jolson**

SHANDAN HITCHENS, et al.,

Defendants.

REPORT AND RECOMMENDATION AND ORDER

In an Order on August 15, 2016, the Court granted Plaintiff leave to file an amended complaint by August 29, 2016, to include a request for a jury trial, name “DWO G. Fredrick” as a Defendant, and dismiss his claims against Defendant Eshett. (Doc. 23 at 2). Rather than filing the amended complaint, Plaintiff filed a number of discovery motions. (*See, e.g.*, Docs. 24, 25, 26). On August 31, 2016, the Court denied these motions as premature and extended Plaintiff’s deadline for filing an amended complaint until September 17, 2016. (*See* Doc. 30 at 2-3). Plaintiff was cautioned that his failure to comply with the extended filing deadline could result in the dismissal of this action. (*Id.* at 3). On September 27, 2016, the Court’s August 31, 2016 Order was returned as undeliverable and re-mailed to Plaintiff on the same day. As a result, the Court extended Plaintiff’s deadline for filing an amended complaint until October 24, 2016. (Doc. 36 at 4). Once again, the Court cautioned Plaintiff that his “failure to comply with this Order may result in the dismissal of this action for failure to prosecute or comply with the Court’s Orders.” (*Id.* at 4).

On October 13, 2016, Plaintiff filed a Motion Finalizing All 7 Defendants. (Doc. 39). Defendants filed a Memorandum in Opposition to Plaintiff’s Motion Finalizing All 7 Defendants

(Doc. 41), pursuant to the Court's Order on October 14, 2016. (Doc. 40). Defendants stated that contrary to Plaintiff's motion, no "understanding" had been discussed, nor finalized, between Plaintiff and Defendants regarding the addition and finalization of Defendants. (Doc. 41 at 1). Defendant also opposed Plaintiff's Motion on the basis that it did not put any of the "7 Defendants' on notice of what it is that they are alleged to have done to warrant them being sued." (*Id.* at 1).

Plaintiff has failed to file an amended complaint, and the time for doing so has now passed. As explained above, Plaintiff has now missed three court-ordered deadlines to file his amended complaint. Consequently, the Court DENIES Plaintiff's Motion Finalizing all 7 Defendants and it RECOMMENDS that this action be DISMISSED for failure to prosecute and comply with the Court's Orders.

Procedure on Objections to Report and Recommendation

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report

and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Procedure on Objections to Order

Any party may, within fourteen days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. 28 U.S.C. §636(b)(1)(A); Fed. R. Civ. P. Rule 72(a); Eastern Division Order No. 91-3, pt. I., F., 5. The motion must specifically designate the order or part in question and the basis for any objection. Responses to objections are due fourteen days after objections are filed and replies by the objecting party are due seven days thereafter. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law. This Order is in full force and effect, notwithstanding the filing of any objections, unless stayed by the Magistrate Judge or District Judge. S.D. Ohio Civ. R. 72.3.

IT IS SO ORDERED.

Date: November 1, 2016

/s/ Kimberly A. Jolson
KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE